O.D of I/45-

1945. **File No.** Part-I

Legal Department-

A **BRANCH**

Subject:— Opinions under the Defence of India Act, 1939

Part I

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Office of the R.L.A.

If inflammable or explosive materials are stored in or about a property, the owner could under clause 1(c) of the statement at page 87 be ordered to prohibit employees from sleeping in the property. It is doubtful whether this power is wide enough for G.D.'s purpose. But this is a question for G.L. to decide, not the R.L.A.

Sd/-

Remembrancer of Legal Affairs.

U.R. to G.D. No. 851, dated the 27th January 1945.

EVY: 30/8.

Office of the R.L.A.

X'mas Eve and New year's Eve dinners constitute a regular feature of club and hotel entertainment It is therefore doubtful whether the New year's Eve dinner held by the Cricket Club of India would come within the purview of F.D. (Supply) Order, No. 390-II-A, dated 28th October 1943. This dance is in no essential way different from New year Dances at the Taj, the Yacht Club, the Willingdon Club and the Byculla Club and it would be invidious to prosecute only the Cricket Club. I do not think that a court will have any inclination to convict in this case. A prosecution seems to me quite inadvisable.

Sd/-

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No. 698, dated 23rd January 1945.

EVY. 30/8.

Office of the R.L.A.

It appears from page 19 ante that the publication in the Bombay Government Gazette Extraordinary of the order dated 21st December 1944 controlling the prices of turkeys was considered by the authority to be best adapted for informing persons whom the order concerned; and the order was accordingly published on 21st December 1944. Consequently rule 119 of the Defence of India Rules seems to have been duly complied with. Besides, due notice of the order was also given through important newspapers, which seems to have been admitted by Mr. Williamson, the Branch Manager of the Army and Navy Stores, Bombay. It is undisputed that the Army and Navy Stores, Limited, Bombay did sell turkey at prices in excess of those fixed by the Order. Mr. Williamson's explanation that he had no proper notice of the order until 30th December is hardly tenable. There appears therefore prima facie a good case for prosecuting Mr. Williamson for the breach of the order by the sale on 30th December 1944. It may however be pointed out that in the event of a prosecution the vires of the order is likely to be challenged on the ground that control of the price of turkey was neither necessary nor expedient for the control of essential supplies. It is for the administrative department to consider whether it can successfully maintain that such control was necessary or expedient in the case of turkey.

Sd/-

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. 788, dated 25th January 1945.

EVY. 30/8.

Office of the R.L.A.

In his letter dated 14th October 1944 the Advocat General has considered the decision of the Bombay High Court in Emperor v. Leslie Gwilt. As pointed out therein he entirely disagrees with the High Court's interpretation of rule 119(1) of the Defence of India Rules in that case and has advised that the attention of the Police Prosecutors and others charged with conducting prosecutions under the Defence of India Rules and orders and notifications thereunder should be drawn to the necessity of leading such evidence by an affidavit or otherwise regarding the publication of order in the particular manner adopted for the purpose under rule 119(1) of the Defence of India Rules. In the present case the dealers who are alleged to have contravened clause 12(3) of the Cotton Cloth and Yarn (Control) Order, 1943, are licensees under the Bombay Cotton Cloth Dealers Licensing Order. As both the orders are interdependent, it is hardly possible that the Court will accept the contention of these dealers that they were not aware of the cotton Cloth and Yarn (Control) Order, 1943 and the fixation of prices cloth thereunder. Besides the breach of clause 12(3) of the Cotton Cloth and Yarn (Control) Order has been committed long after the order was duly promulgated and consequently it would not be difficult to persuage the Court to draw resumption a ainst the accused. There appears therefore no objection to prosecuting both the dealers; but care will have to be taken to see that necessary affidavits are put in to prove that the publication of the order adopted in the present case was done in the manner considered by the authority as best adapted for informing persons whom the order concerns. Even after all this precuation if the prosecution fails in the Magistrate's Court, and attempt may to get the matter referred to a Full Bench for decisio

2. Mr. Murdeshwar appears to consider that the ratio decidendi of the High Court decision in Emperor v. Leslie Gwilt does not apply to a statutory order such as the Cotton Cloth and Yarn (Control) Order, 1943 and that a presumption under section 114 of the Indian Evidence Act will arise in favour of a proper publication of the order as provided in rule 119(1) of the Defence of India Rules. The first point of Mr. Murdeshwar is hardly tenable. The order alleged to have been contravened in Emperor v. Leslie Gwilt was also a statutory order made under rule 81(2) of the Defence of India Rules, and the Cotton Cloth and Yarn(Control) Order, 1943, is also one made under the same provision. It is hardly possible to maintain that the order referred to in rule 119(1) of the Defence of India Rules relates only to an executive order. There is therefore no substance in Mr. Murdeshwar's contention and no Court would accept it.

3. With regard to his second contention namely presumption under section 114 of the Indian Evidence Act, it appears from the judgment in Emperor v. Leslie Gwilt that the High Court did consider the point and refused to draw the necessary presumption for reasons stated therein. Mr. Murdeshwar has advanced no argument against the view taken by the High Court It may however be noted that the High Court relied on the observations of Woodroffee J. in Narendra Lal v. Jogi Hari (1905) 32, I.L.R.; but the authority of that decision of the to have been considerably shaken by the decision of the Judicial Commission in Sasisekar v. Bir Bikram 35 C.W.N. 1239, which decision it appears was not brought to the notice of the High Court in Emperor v. Leslie Gwilt (see Sarkar's Evidence Act, p. 922). It is worthwhile again advancing the argument that in the case of Cotton Cloth and Yarn (Control) Order, 1943 the Court ought to presume that Government was satisfied that publication in the Official Gazette was the best means of publishing notice.

4. The decision in Emperor v. Leslie Gwilt does not make

ignorance of the law a valid defence. Provided there is compliance with the provisions of rule 119 of the Defence of India Rules, the accused will be credited with knowledge of the law, whether or note he did indeed have knowledge. The judgment clearly recognises that position. It is only in regard to the requirement of evidence to prove compliance with rule 119, that the judgment is adverse to Government.

5. A prosecution may be failed in these cases and if necessary an appeal to the High Court may later be considered. The position may be brought to the notice of Government of India and they may be consulted regarding the arguments to be advanced on behalf of Government.

Sd/-

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. -Co fl., dated the 6th January 1945.

EVY. 30/8.

Office of the R.L.A.

Government having already entered into possession of the godown will have to pay compensation from the date of occupation, and the compensation will have to be determined separately for the period from the date of occupation to the date of the roofing of the godown and for the subsequent period.

Sd/-

Remembrancer of Legal Affairs.

U.R. to the Food Controller No. 923, dated the 31st January 1945.

EVY. 30/8.

Office of the R.L.A.

The deposit of a month's rent in advance is made in pursuance of an agreement between the landlord and the lessee. By requisitioning the property Government cannot claim to succeed to all the interest of landlord except to occupy the property from the date of requsitioning. Consequently it would not be competent for Government to claim the deposit lying with the landlord. The contention of the trustees is therefore valid and Government will have to pay them Rs. 61-5-0.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D.1 No. 1026, dated the 3rd February 1945.

EVY. 30/8.

Office of the R.L.A.

Attention of the Additional Director of Civil Supplies (Enforcement) is invited to the R.L.A's recent opinion No. 5-Confl. dated the 6th January 1945 and he is informed that if any opportunity occurs to have this question of notice regitated before the High Court the points made by him and the cases referred to, will be duly considered for the purposes of the argument.

Sd/-

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. 1025, dated the 3rd February 1945

EVY. 30/8.

Office of the R.L.A.

On a fair and reasonable construction it appears that the F.D. (Supply) Order No. C.R. 44 dated 15th November 1944 is not designed to control the import of Cotton seeds or oil cake in transit. The ratio decidendi of the High Court decision in Criminal Regision Application No. 562 of 1943 appears to apply to the present case and no import permit would be necessary. If for administrative reasons a permit ought to be made necessary for goods in transit, it would be advisable to amend the order.

Sd/-

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) No. 1077, dated the 5th February 1945.

EVY. 30/8.

Office of the R.L.A.

Legally Government is not bound to pay this Bill As a favour to the Valvoline Oil Company, Government may pay and deduct the amount from the amount to be paid to the Electricity Company for oil ta en over. It is for the P.W.D. to decide whether it will take the latter course.

Sd/-

Remembrancer of Legal Affairs.

EVY. 30/8.

U.R. to P.W.D. No. 1139 of 7/2/45

Office of the R.L.A.

In view of the fact that the ceremony was fixed for the 2nd instant the questions raised for the consideration of the R.L.A. will be merely of academic interest. If it is considered that the order has been contravened, a detailed statement of facts with the necessary papers may be forwarded to the R.L.A. for considering the advisability of prosecuting Mr. Puranik.

Id./..... 6/2/45
Remembrancer of Legal Affairs.

U.R. to the Controller of Rationing, No. 1113 , dated the 6th February 1945.

SMR 30-8-56
4 Copies.

Office of the R.L.A.

Rule 81(2)(c)(i) provides that for certain purposes Government may by order provide for requiring work to be done by an undertaking when such undertaking is engaged in or capable of doing, work essential for certain purposes. There is no undertaking engaged at the moment in such work. The question then is whether there is an undertaking capable of doing essential work. Rule 81(2)(c) was apparently intended to regulate businesses and factories engaged in essential work. In this case Government is dealing with a lady who cannot make up her mind whether to sell, complete or have tested her incomplete building. It is impossible to say that her activities amount to an undertaking for the purposes of the above rule; and if there is no undertaking, there can be no order under that rule.

Id/-
23/2/45

Remembrancer of Legal Affairs.

U.R. to R.D.H No. 83-Confl; dated the 23rd February 1945.

N.V.D.
30/8
4cs.

The case is not free from complications and it will not be possible for the R.L.A. to advise unless he has the full facts Before him.

2. It appears from the Collector's report that the entire Sanitorium building was requisitioned for military purposes by the Collector on 30-8-1943 at the instance of the Garrison Engineer, Deolali. The Sanitorium consists of a number of bocks. The requisition procedure in respect of blocks 1,2,7 8 and 9 was completed on 30-11-1943. But since the Garrison Engineer did not want possession of the remaining blocks no steps were taken for taking over blocks 3,4,5 and 6. It appears that as a result of a private arrangement between the owners of the building and the Manager of the Garrison Talies blocks 3,4,5 and 6 were earmarked for the staff of the Garrison Talkies. It is not known when exactly the applica nt Muljiani took up residence in block No. 4. But presumably he did so some time after the requisition Order in pursuance of the private arrangement entered into by the owners and the Manager of the Garrison Talkies. It is also not clear what compensation has been paid to the owners for the requisitioned building. Nor is it clear as to whom the tenant Muljiani was attorning in respect of block No. 4-whether to the trustees of the Sanitorium or to the Manager of the Garrison Talkies. Since the possession of blocks 3,4,5 and 6 has not yet been taken over by the Collector in pursuance of the requisition Order, the requisition Order would to that extent be deemed to have been modified. But much will depend upon whether the compensation paid is for the whole or part of the premises requisitioned

3. R.D. is accordingly requested to obtain a full and clear report from the Collector together with a copy of the requisition Order and the Order of compensation if any.

Id./.....

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9020 dated the 22nd December 1944.

Office of the R.L.A.

The view taken by the Secretary, Revenue Department at page 36 ante is correct.

Id./..... 21/2/45

Remembrancer of Legal Affairs.

U. . to R.D., No. 82-Confl dated the 22nd February 1945.

SMR 30-8-56
4 Copies.

Office of the R.L.A.

The article entitled "Is milk powder really prepared from milk" appearing in the issue of the "Bombay Sentinel" of 17th February 1945 disputes the medical opinion that milk powder is prepared from milk and contains nutritive elements. It goes further and asserts that milk powder is a worthless and harmful product the underlying suggestion being that it is manufactured from vitaminless grass or from some worthless vegetables or from animal refuse. The only clauses under which the article might possible be regarded as a prejudicial act are clauses(g) and(p)of rule 34(6)of the D. of I. Rules. Clause(g)refers to an act which is intended or is likely to cease fear or alarm to the public or to any section of the public. Clause(p)refers to an act which is intended or is likely otherwise to prejudice the public interest. The use of fresh milk in the preparation of tea and coffee in restaurants and hotels in Bombay having been banned, milk powder has necessarily to be used for the purpose. But it is hardly likely that the tea and coffee drinking section of the public resorting to restaurants and hotels for the purpose will beadversely influenced by the statements made in the article more especially in view of the authoritative medical opinion on the nutritive value of milk powder. Although it is not possible to say what view the courts would take, it seems to me very doubtful if the article can properly be held to come within the mischief of clause(g) or (p)of rule 34(6)of the D. of I. Rules.

Id./.....
Remembrancer of Legal Affairs.

U.R. to D.C.S.(F.D.(Supply)No. 85-Confl. dated the 23rd Feb. 1945.

SMR 30-8-56
4 Copies.

Office of the R.L.A.

The whole book is an attack on the Portuguese Government and bristles with objectionable passages. Attention in particular is invited to passages marked A-A on pages 7-8, 13, 29, 30, 31, 32-35, 37, 44, 49, 50-52, 55-57, 57-60.

Sd/-
17-3-45

Remembrancer of Legal Affairs.

VHB 30/8 4 C U.R. to H.D.(Poll.) No. 2160 dated the 17th March 1945.

Office of the R.L.A.

The following is an extract from a circular issued by the Harijan Sevak Sangh:-

"Dear Sir/Madam

I have great pleasure in informing you that under suspicious of the above Sangh, a Festival Day for Harijan and non-Harijan families has been arranged at the Gowalia Tank Maidan on Sunday, 25th March 1945, in the afternoon.

Untouchability will not disappear unless Harijans and non-Harijans form the habit of living and enjoying together. It is hoped that you and your friends interested in the cause, will come with your families, with your own food and have a picnic on the above maidan. An entertainment programme has also been arranged."

The question is whether the circular contemplates breach of F.D.(Supply) Order No. 390-II-A dated the 28th October 1943. That Order provides that no person or body of persons acting in concert either jointly or severally, shall, on any one day at or in connection with any party entertainment or function religious, social or otherwise either himself or themselves or through an agent serve distribute or provide for consumption many eatables, milk or any beverage (other than tea) in which milk is used to fifty or more persons. What is proposed in the circular is that "You and your friends interested in the cause (i.e. removal of untouchability) will come with your families with your own food and have a picnic

on the above maidan". It is nowhere suggested that those who attend the function with their own food should share it with others present on the occasion. If persons instead of eating their own food at their residence take it to the maidan and eat it there, exfacie there would be nothing wrong, since they neither serve nor distribute nor provide for consumption any eatables to persons within the meaning. of the Order. The consumption of food as envisaged in the circular will not therefore come within the purview of the F.D.(Supply) Order No. 390-II-A dated the 28th October 1943.

o c Id/ P.N.M.
20.3.45.

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), no. 2223, dated the 20th March 1945.

MM

30/8-

Office of the R.L.A.

"The common law rule is "once a high way always a high way'. The public cannot release rights once acquired by them, no authority can bind them in purporting to release such rights and there is no extinctive presumption or prescription arising from non-exercise thereof" (see Halsbury's Laws of England Volume 16 page 262). In the present case the public foot path connecting Marine Drive with the Railway over bridge appears to be a high way and the rights of the public can neither be extinguished nor release (see section 24 of the Bombay City Land Revenue Act, 1876). The only feasible course in the circumstance wouldbe to close the foot path provisionally by an order under rule 12(1) of the Defence of India Rules after providing an alternative foot path.

Id/- P.N.M.
20/3/45.

o/c Remembrancer of Legal Affairs.

U.R. to P.W.D.No. 2263, dated the 22nd March 1945.

MM

30/8-

L.D.R.I.No. 2165
12/3/45.

Submitted with reference to the R.D. office note at p . 23 ante

2. It appears that one Mr.Pocha's bunglow at Koregaon Park, Poona has been requisitioned by the Collector of Poona. The bunglow is at present occupied by the officers of the Modern Food Products Co., who have been paying the electric and water charges. The Collector had offered Mr. Pocha a monthly compensation of Rs.220. Mr. Pocha however is not prepared to accept the compensation at this rate and has applied to Govt. for arbitration contending that the requisitioning authority should also undertake to carry out repairs to the requisitioned building till it remains under requisition. The R.D. is of opinion that the above contention raised by Mr. Pocha cannot be accepted in view of the orders contained in G.R. R.D.No. 5883/39, dated 12th July 1943 and 26th Jan. 1944 and that the dispute by sec. 19 of the D. of I. Act. Before issuing the draft G.R. and notifn. at pp. 11-13 ante, the R.D. has referred the papers u.o. to L.D. H.D.& F.D. in succession.

Sd/- S.A .Vora
S.A.S. Papers may be seen and passed on to H.D.

A.L.R. Id/. R S H. Id/- R.T.K.

Id/- P.N.M. 19/3/45.

U.R to H.D.NO. 2264 dt. 22-3-45.

MM

L.D.R.I.N$_o$. 2681.
28-3-45.

Submitted.

2. Please see the letter from the D.M., Kolaba at p. 1 ante. The District Supply Committee, Kolaba has recommended that the adulteration of Konda (rice bran) with Bhas (paddy husk) practised by certain dealers in the district should be prohibited. The D.M. is of the opinion that there is no provision in the Defence of India Rules dealing with adulteration as such and that the use of rule 81 of the Defence of India Rules for stopping adulteration may be a little far-fetched. He has therefore proposed that the R.L.A. may be requested to advise whether an Order under rule 81 of the Defence of India Rules can legally be issued by him prohibiting the adulteration of rice bran with paddy husk. The A.D.C.S.(milk) observes in his note at p.2 ante that the only way to stop such alteration is to fix under rule 81(2) of the Defence of India Rules, prices for rice husk and paddy husk and also for the mixture of the two at the same level as for paddyhusk (i.e. the inferior variety). The R.L.A. is requested to advise.

Sd/- S.A. Vora.

S.A.S. Reply may be:- The suggestion made by the A.D.C.S. (Milk) is the most feasible_____ to follow

Id/- R.T.K. 2/4-

A.L.R. Reply may be S.A.S's note.
I do not commit myself to the proposition that no order prohibiting adulteration can be made under the D. of I rules. The F.D.(S) proposal is sound & may be supported without entering into the question raised by the Collector.

Id/- R.S.H. 2/4.

Contd.

R.L.A. I agree.

Id/- P.N.M.
2/4/45.

U.R. to F.D.(Supply) N o. 2572 dt. 3-4-45.

MM

Office of the R.L.A.

It is clear ~~xxxxx~~ from the papers what is the precise import of "Military Credit Notes". F.D. (Supply) Order No.364-IV dated 8-12-1943 banning the export of ghee from any place within the limits of the Province of Bombay to any place in India outside the limits of the said Province would not, by virtue of rule 4 of the Defence of India Rules, be applicable to those consignments of ghee which are made by or under the direction of any member of His Majesty's forces or any public servant acting in the course of his duty as such member or public servant; and no specific provision in the Order providing for exemption in such cases is necessary.

Sd/- P.M.M.
5/4/45.

oc

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) No. 2669, dated 6-4-1945.

MM

Office of the R.LA.

It is clear from the terms of the Military Credit Note now supplied that the stores consigned by rail undersuch Note are or were the bonafide property of the Government of the Defence or war Department. The consignment of military stores is made by or under the authority of a member of His Majesty's Forces or a public servant acting in the course of his duties a such member or public servant. Consequently by virtue of rule 4 of the D. of I. Rules, the F.D.(Supply) Order No. 364-IV dated 8-12-1943 has no application to the transport or export of military stores. The R.L.A. adheres to his previous opinion No. 2669 dated 6-4-1945.

Id/- P.M.M.

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply) No. 2885, dated the 13th April 1945.

MM

Office of the R.L.A.

It appears from the letter at page 11 ante that Home Department has taken the view that the powers of the Collectors under No.SD/w.1742 dated 29th May 1942 were withdrawn from them and redelegated to them by No.SD II/1370 dated 15th September 1944. Home Department s view is not correct. The powers vested in Collectors under No.SD/II W 1742 dated 29th May 1942 remained unaffected by No.SD II/ 1370 dated 15th September 1944 until they werrdrawn and redelegated under No. SDII/-394 dated 20th Februáry 1945. The Order at page 1 is made by the Collector and not the District Magistrate. The relevant notification has therefore been cited ∕therein.

Sd/- P.N.M.

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl) No. 2275, dated 22nd March 1945.

MM

2113
9-3-1945.

Submitted.

Fl. see R.D. note at p. 61 ante. Room No. 22 in Jalimsingh Building at Phanaswadi was in the occupation of one Chimanlal Kederlal Desai, who died on 16th October 1944, at his native place, leaving a widow Bai Sakribai, Bai Ratankunvarbai Jalimsingh, the landlord, informed Govt. on 24-1-1945 of the vacancy and that she declined to recognise as her tenant the deceased tenant's nephew Jayantilal C. Desai, who is at present occupying the same. The widow, it appears, is not in Bombay and the nephew is unwilling to vacate the room although a notice was served on him (p.17 ante). On 1-2-45 the landlord was informed by Govt. that the room will be required by Govt. and that she should not let it to any one. (p.21 ante). The Collr. of Bombay requisitioned the room for a clerk serving in the P.S. Commission, Bombay. On 9-2-45 the Solicitors of Mr. Jayantilal C. Desai wrote to the Collr. stating that their client was a nephew of the deceased tenant and was brought up by him since childhood and was throughout staying with him in the room in Bombay as his family member and requesting Govt. to withdraw the requisition order (p.33 ante). On 22-2-45 Govt. wrote to the Collr. that the requisition order should stand that possession ~~xx~~ of the room should be taken from 1-3-1945 (p.37 ante). On 28-2-1945 the Solrs. wrote to Govt. to withdraw the order (pp. 39-43 ante). On 5-3-45 the Secy. P.S.C. informed Govt. that the occupant refused to give vacant possession (p.59 ante). R.D. propose to inform the Solrs. in reply to their representation dated 28-2-45 that Govt. sees no reason to withdraw the requisition order. They also propose to request the Collr. to give a final warning notice to the occupant of the room to give vacant possession of the room within a specified date failing which assistance of the police will be taken to secure possession. R.D. has merely referred the papers to the R.A.A. without raising any questions Presumably that Deptt. wants to know whether the proposals made in

P.T.O.

that Deptt. note are objectionable.

3. The only ground on which acquisition order is objected to is that Mr. Jayantilal C. Desai, nephew of the deceased Chimanlal was staying with the latter in the same room as a member of the family. This does not appear to be correct as he moved there only after his uncle's demise and that he is staying there alone. (p. see L.S.A.D.'s note at p.25 ante). Even presuming that the Solr's contention is correct, the tenant on whose name the room stood having died the monthly tenancy contined in favour of the deceased's children or in their absence the widow but not a nephew. The nephew cannot succeed to the tenancy of his maternal uncle. The Solicitor's Contention does not appear to be correct. If the occupant does not vacate the room before a specified date the assistance of the Police may be taken to secure possession. The view taken by the R.D, in its o.n. at p.61 ante appears to be correct and the papers may be seen and returned.

(A

d/- P.S.Nadkarni
27/3.

S.A.S. A may be done.

Sd/- R.T.K.
31.3.

A.L.A. Id/- R.S.K.
2/4.

R.L.A. Id/- P.N.
4/4/45.

U.O.K. to A.D. No. 2658 dt. 6.4.1945. 4-Cs./ .V.V.
30/8.

Office of the R.L.A.

It appears that the dispute between the workers of the Indian Hume Pipe Co. and their employer has been referred for adjudication under rule 81A(1) of the Defence of India Rules; but notwithstanding such reference the workers are still on an illegal strike since 30th March 1945. As the factory is on very important war orders it is necessary that it should resume work immediately. The Commissioner of Labour therefore desires to propose to the management that they should put up a notice warning the strikers that if work is not resumed within a certain period they would be presumed to have left the Company's service and the management would recruit new labour in their place. The question referred to the R.L.A. for consideration is whether such notice would contravene paragraph (iii) of the Government of India's Order dated the 21st August 1942.

Paragraph (iii) of the Government of India Order dated the 21st August 1942 issued under rule 81-A of the Defence of India Rules provided that when any or all of the matters of a trade dispute have been referred to a Court of Inquiry or a Board of Conciliation under the Trade Disputes Act, 1929 or for conciliation or adjudication under an order made under rule 81-A of the Defence of India Rules, no person employed in any under-taking concerned in the dispute shall go or remain on strike and no employer in any undertaking concerned in the dispute shall lock-out or continue to lock out his employees, during the period from the making of the reference until the expiry of two months after the conclusion of the proceedings upon such reference. "Lock-out". as defined in section 2(c) of the Trade Disputes Act, 1929 means the closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him , where such closing

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M.
.45
Legal Affairs.

l, dated 18th April 1945.

suspension or refusal occurs in consequence of a dispute and is intended for the purpose of compelling those persons. etc. to accept terms or conditions of or affecting employment. By putting up a notice as proposed by the Commissioner of Labour the management would purport to refuse to continue to employ those Labourers who do not resume work by the time the notice expires; and the refusal obviously being in consequence of a dispute and intended to compel the Labourers to submit to the terms and conditions of employment, the notice would it appears contravene paragraph (iii) of the Government of India Order dated the 21st August 1942. There would however be no objection to the management recruiting new labour temporarily with option to the old Labourers to resume work pending the adjudication of the dispute.

Sd/- P.N.M.
18.4.45
Remembrancer of Legal Affairs.

U.R. to Commissioner of Labour, No. 3041, dated 18th April 1945.

Office of the R.L.A.

Under para. 2 of the Second Order No. A 826 dated 14.6.1943 the Provincial Government may by order in writing direct any person whose present or prospective demand does not exceed 50 K. Ws. to reduce his consumption of electrical energy to such extent and in such manner or by such means as may be specified in the notice and such person shall comply with such directions; and this power extends to reducing the supply which may have been sanctioned by this Government and Central Electric Power Control Board provided the present demand or the prospective demand of such consumer does not exceed 50 K. Ws.

Sd/- P.N.M.
18.4.45.

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 3057 dated 19th April 1945.

Office of the R.L.A.

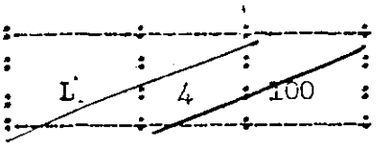
Rule 12^ of the Defence of India Rules provides that any police officer may arrest without warrant any person who is reasonably suspected of having committed, of committing or of being about to commit a contravention of any rules 12, 17, 27, 49, 51, 51A, 51B, 52, 53, 57, 59A, 76A, 78, 78A, 79, 80, 81E, 89, 118, 119, and 120.

2. In the Defence of India Rules there are some rules which contain provisions the contravention of which is made punishable, while there are other which merely provide for the passing of Orders and it is the contravention of these Orders which is made punishable. A distinction is generally drawn between the contravention of a rule and the contravention of an order under a rule. This distinction is however not observed in rule 128 which brings within its ambit both types of rules, namely those which contain provisions the contravention of which is made punishable (e.g. rules 59A, 78, 81E, 113, 119, and 120) and those which provide merely for passing Orders which when contravened, are pubishable (e.g.rules 12, 17, 27, 49, 51, 51A, 513, 52, 53, 57, 76A, 78A, 80 and 89). The wording of rule 128 is clearly not very happy inasmich as it refers to contravention of rules but not to contravention of Orders made under the rules, though its obvious intention was to cover the contravention of certain rules as well as the contravention of Orders passed under other rules. This lacuna may be pointed out to the Government of India when H.D. moves for amendment of rule 128 for the purpose of bringing within its scope the provisions of rule 88.

Sd/- P.N.K.
1.5.45.
Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.), No. 3442, dated the 2nd May 1945.

Office of the R.L.A.



The Commissioner, N.D., in his letter at page 1 stated that "Mr. Kuberdas Nargovindas is the Inamdar of Sahijpur Bogha a village in the City Mahal of the Ahmedabad district and is entitled to the land revenue on all occupied lands in the village. The village is surveyed and settled and the Inamdar is therefore entitled to assessment according to the actual use of the land under section 43 of the Land Revenue Code." From this the R.L.A. understood that Government had merely bestowed the assessment upon the Inamdar and that under the terms of the sanad Government was liable to recompense the Inamdar for the assessment leviable according to the actual use of the land. However, now that the sanad has been obtained it is clear that the land is the private property of the Inamdar and that the sanad does not make Government liable for the payment of the assessment in a case like the present. This is obviously a case of compensation for land requisitioned under the Defence of India Rules. When the Inamdar's land is requisitioned, the Land Revenue Code and the Rules thereunder cease to apply, so far as the present matter is concerned. There is no relationship of land lord and tenant between the Inamdar and the Government. The person using the requisitioned land is not an occupant is defined by the Land Revenue Code. The amount paid to the Inamdar is not rent for the use of the land but compensation for the income which the Inamdar has lost, and that compensation is to be based on the income which he was obtaining before the land was requisitioned. N.D.'s view at pages 5 and 6 correct and anything contrary to that view in the former opinion No. 8678 dated 9th December 1944 should be taken as modified.

Id/P.N.M.
2.5.45.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 3483 dated the 3rd May 1945.
with files 879, 207 II, p.8 Sanad & law papers.

Office of the R.L.A.

L	4	161

Rule 32(1) of the Defence of India Rules provides that a District Magistrate or any other Magistrate authorized by the District Magistrate in this behalf , a Commissioner, Superintendent or District Superintendent of Police or any other Police not below the rank of Sub-Inspector authorized by the Commissioner, Superintendent or District Superintendent of Police in this behalf, may for any purpose connected with the enforcement of the provisions of rule 31 enter with such assistance as he may think for any vessel or aircraft at any port or place in British India etc. "Any vessel" may include a foreign vessel. Consequently rule 32(1) is clear authority for entering a foreign vessel in a British Indian port for the purpose specified in that rule.

"Many writers maintain and the practice of France and some other States supports their view, that the litteral State has no jurisdiction in case only the internal order of the ship is affected or the relations between members of the crew or passengers are alone concerndd. However there is no rule of International Law which limits its jurisdiction to this extent and it can claim jurisdiction in all matters over such merchants man hs have cast ancher within the maritime belt or entered a port together with the persons on board. On the other had the litteral State is not compelled to exercise such jurisdiction and many States have therefore by commercial or consular treaties stipulated that in such cases as those in which the internal order of the ship alone is concerned, jurisdiction should be exercised not by the litteral State but by the home State through its consul. A convention and statue respecting the International Regime of Maritime Ports was signed at Geneva on December 9, 1923 which has been ratified by a number of States including Great

Great Britain and is now in force" (See Oppenheim's International Law, vol. I pp. 394, 395). Rule 31 of the Defence of India Rules prescribes restrictions on the entry into and departure from British India of foreigners and rule 32(1) provides for power to enforce them, The entry on board a foreign vessel in any port in British India under Rule 32(1) would not be for the purpose of maintaining internal order of the ship and consequently there could ordinarily be no objection to a duly authorised police officer entering a foreign vessel in the port of Bombay under rule 32(1) of the Defence of India Rules. In view however of the attitude taken by the consul General for Greece it is desirable to ascertain whether the Geneva convention and statute above mentioned contains any provision excluding the exercise of such power. The Government of India should therefore be consulted in the matter.

Id/P.N.M.
4.5.45.

Remembrancer of Legal Affairs.

U.R. to P. and S.D., No. 211-Confl. dated the 5th May 1945.

L	4	102

SNT/30,8.

Office of the R.L.A.

In the case of Kin Emperor v. Raghunath at p. 41 ante no appeal can be filed since it is time barred.

The 2nd case King Emperor v.Lakhratrai & Raghunath Singh is not yet time barred. However as regards the first charge there is no evidence of disposal. As regards the 2nd charge under the Iron & Steel Control (Movement by Road or River)Order 1942 it is not clear from the judgment whether there is any evidence about the movement of the goods. Unless the necessary facts can be substantiated a ainst the accused, the High Court is unlikely to consider the question of law. On the information supplied to the R.L.A. neither of these cases is suitable for appeal to the High Court.

Sd/-

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply)No.3592,dated the 7th May 1944

EKM.30/8/

Office of the R.L.A.

The Public Works Department is requested to make mere clear the difficulty experienced by that Department in the case under reference.

Sd/R.T.K.

For Remembrancer of Legal Affairs.

D.R. to P.W.D. No.3280 dated the 26th April 1945.

EKN.30/8/

Office of the R.L.A.

The power to reduce a consumer's consumption of electrical energy under paragraph 2 of the second Order A-826, dated the 14th Jund 1943 extends to the whole supply including the additional supply if any sanctioned under the Control Order. The view taken in paragraphs 3 and 4 of the P.W.D. office note at page 41 ante is correct.

Sd/ P.N. 15/5/45.

U.R. to P.W.D. No.3725,dated the 15th May 1945.

EKN.30/8/

Office of the R.L.A.

No. compensation can be claimed by the Daker Umreth Electricity Company Ltd., from Government for less on account of the restriction orders issued by Government; see section 17(2) of the Defence of India Act,1939.

Sd/P.N.M.

24/5/45.

Remembrancer of Legal Affairs.

U.R. to P.W.D.No.4003,dated the 24th May 1945.

EKN.3-0/8/

Office of the R.L.A.

One of the conditions subject to which the godowns in the present case were requisitioned is that "such compensation as may be settled by agreement shall be paid to the owner of the property and in the event of failure to reach agreement such compensation as may be determined under the provisions of the Defence of India Act, 1939 or the rules thereunder. Clause (a) of section 19(1) of the Defence of India Act provides that where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement. In his letter at p.29 ante the solicitors for the owner of the godowns appear to contend that the bills for rent at the rate of Ts.206 and Rs.149 as fixed by the Executive Engineer were accepted by the office of the Chief Accounts Officer Finance Department (Supply) and no objection was ~~xixi~~ raised to the same until long after derequisitioning the godowns. The correspondence with respect to it has not been forwarded to the R.L.A. If the rent at the rate of Rs.206 and Rs.149 as fixed by the Executive Engineer has been communicated to the owner of the godown for acceptance and if in pursuance of it he has submitted the bills as alleged, an agreement could be easily spelt therefrom within the meaning of clause (a) of section 19(1) of the Defence of India Act in which case it would difficult for Government to resile from it, although the Executive Engineer might have fixed the rent ~~xxxxxx~~ under a misapprehension of facts. The F.D.(Supply) is therefore requested to forward to the R.L.A. all the relevant papers to enable give a definite opinion in the present case..

Sd/R.T.K.

for Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No.3905, dated the 21st May 1945.

EKM.30/8/

Office of the R.L.A.

Apparently there was no agreement between Government and the owner regarding the rent for the requisitioned godowns Government is not bound by the rents originally fixed by the Executive Engineer and it is open to Government to ask the Executive Engineer to reconsider the rents he has fixed. However in the circumstances of this case, it is advisable for Government to accept the revised rents of Rs.150/. and Rs.110/P.M. and to make an offer on that basis to the owner. Apparently the owner was not asked to repair the godowns and Government made no complaint about their condition until the requisitioning order had been cancelled. If the owne refules to accept the revised rents the only alternative would be to ask him to have the amount of compensation settled by ~~xhx~~ arbitration under section 19 of the Defence of India Act and the Rules under that section.

Sd/P.N.M.

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply)No. 4208,dated the 1st June 1945.

EKN.30/8/

Office of the R.L.A.

The view taken by Secretary, Home Department, at page 20 ante is correct. It is clear that the car of Messrs. Salebhoy and Sons was requisitioned under rule 75A of the Defence of India Rules ostensibly for Mr. Sausman but really for Mr. Sam Nariman; and these facts are now made known to Messrs. Salebhoy and Sons. It will be difficult for Government to support their requisitioning order in a Court of law. It cannot be contended that the car was required for Mr. Sausman, nor can it be contended that the requisitioning of the car for Mr. Sam Nariman was justified under rule 75A of the Defence of India Rules. In the Circumstance the best course would be to compromise with Messrs. Salebhoy and Sons as suggested by Secretary, Home Department.

Sd/

Remembrancer of Legal Affairs.

U.R. to H.D.No.4272, dated the 5th June 1945.

EKN.30/8/

Office of the R.L.A.

It would undoubtedly make it more difficult for agrieved parties to obtain an interim injunction from the High Court if requisition orders were issued by Government and not by the Collector. Legally a temporary injunction cannot be issued against Government under section 45 of the Specufic Relief Act. However in a recent case of Milk ordered to be sold to Government under Rule 81(2) of the Defence of India injunction against Government. Advocate General on behalf of Government is contesting the injunction order. It is yet too early to say how the High Court will decide the matter but it is hoped the decision will be in favour of Government. It is therefore desirable to await the High Court's decision before supporting the Government of India's proposal.

Sd/ P.N.M. 14/6/45

Remembrancer of Legal Affairs.

U.R. to R.O.No.4477 dated the 15th June 1945.

EKN. 30/8/,

Office of the R.L.A.

It would be necessary to examine the terms of the contract to ascertain whether the agreements relating to the purchase of forests were made on the assumption that there would be no restriction on the export of charcoal from the Kolaba District and whether such a term could be inferred expressly or impliedly. R.D. may therefore obtain copies of agreements, if any, to enable the R.L.A. to consider this aspect of the case fully.

Sd/R.T-K.

for Remembrancer of Legal Affairs.

U.O. to R.D.No.3837,dated the 18th May 1945.

EKN.30/8/

Office of the R.L.A.

By Government Notification, Finance Department (Supply) No.32/60316/I., dated 26th April 194- Government has prohibited the removal of charcoal or woodfuel by rail, road, river or sea from any place within the limits of the Kolaba District to any place in India outside the said limits except under and in accordance with the conditions of a license granted by the Divisional Forest Officer, Kolaba. It is contended that this order is ultra vires. It is also further contended that the charcoal producers who have purchased the exploting of the forests for a period of five years on payment of price would be greatly affected by the aforesaid control order, since they will have no remedy against the owners of forests. The questions raised for consideration of the R.L.A. are-

(1) whether the control order No. 32/60318/IV dated 26th April 1944 is ultra vires and

(2) whether the charcoal producers can have any remedy against the owners of forests.

2. Question (1): It is true that sub-section (1) of section 16 of the Defence of India Act provides that no order made in exercise of any power conferred by or under that Act shall be called in question in any court. But this provision requires that the order is passed in the exercise of power conferred by the Act and not merely in colourable exercise of such power. It is not enough that the orders should be passed under colour of the power conferred. They must be done in actual exercise of it and no power is conferred to make such order in bad faith, or in abuse of the Act or for the purpose of effecting a fraud on the Act and consequently these issues must be investigated if they are raised (see Prabhakar Keshav Pare v. Emperor I.L.R.(1943)Nag 154) . An order not made bona fide can be interferred with(A.I.R 1943 Lah. 41) . The question would therefore be whether the Order which is impugned now is made in the exercise of powers vested in Government and in good faith.

3. The order purports to have been passed under sub.rule (2) of rule 81 of the Defence of India Rules which empowers Government to pass orders for the purpose of securing the defence of British India or efficient prosecution of the war, for maintaining supplies and services essential to the life of the community. Presumably, the Order could be justified, if at all, only as maintaining supplies essential to the life of the community. It is true that charcoal and woodfuel are quite essential to the life of the community, and an order for maintaining supplies thereof would be perfectly competent. But it appears from the papers underlying the present Control Order that the only object which Government had in mind was to prevent indiscriminate exploitation of forests and erosion of soil. The prevention of erosion is itself an element in maintaining essential supplies. But such connection with the purposes of Rule 81 appears to be rather tenuous. Moreever the prevention of erosion of soil is not intended to last only for the duration of war or to be fully effective during the war period. Further the Control Order has the effect of conserving supplies of charcoal and woodfuel within the District of Kolaba, but it seems that the conserving of supplies in that District is not at all essential when there is no dearth. There is therefore considerable danger of the order being held ultra vires, unless Government can honestly t stify that it has a closer connection with the pruposes of Rule 81 than the present papers show.

4. Question (2): It appears that the forest contractors have entered into agreements with the forest owners for expoilting the forests for a period of five years on payment of certain prices. These agreements have been made after the declaration of the present war. There is no question of avoiding the contracts in the present case for prices have already been paid and all that the contractors have to do is to exploit the forest subject to certain conditions. The only relevant provision under which compensation for loss through non-performance of a promise can be claimed is section 56 of the Indian Contract Act which provides:

"Where one person has promised to do something which he knows or, with reasonable diligence; might have known, and which the promise did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise."

The forest contractors would be entitled to claim compensation from the forest owners only if it can be proved that the forest owners have failed to perform the promise whereby the contractors have suffered loss. It is not contended that the forest owners have committed any breach of the promise nor can it be said from the terms of the contract that the Order has rendered the m incapable of performing their part of contract. If that is so, section 56 will have no application and the forest contractors cannot claim any compensation from the forest owners on the ground that they have suffered loss on account of being unable to export charcoal as a result of the embargo placed by the Order.

Id/F.M.M.
13/6/45

Remembrancer of Legal Affairs.

U.R. to C.D. No. 4447, dated the 13th June 1945.

Mjr/30/8/
4 Cs.

Office of the P.L.A.

The order at page 7 does not invalidate sales effected before the making of that Order. But the seeds sold are subject to the bar on removal and a permit to removal is required.

Sd/- F.....

O.C. 8/6/45

Remembrancer of Legal Affairs.

U.A. to F.D. (Suppl), No. 4371, dated the 8th June 1945.

Ajr/30/8/

4 Js.

Office of the R.L.A.

F.D. (Supply) Order No. 5 7(G)/IV-3 dated 25th January 1945 is part of the measures designed to control the milk supply in Bombay. This Order prohibits the use of cow and buffalo milk and compels the addition of skim milk to tea and coffee before serving. To define tea as including hari cha" would in effect compel the addition of skim milk to hari cha". But milk is never an ingredien of hari cha' nd the result of the definition would be either to spoil the "hari cha" or to stop its sale. Further since "hari cha" never contains milk, it has no d direct connection with milk control. The possibility that it may afford a means of evading the Order will hardly validate its control under Rule 81 of the Defence of Indi Rules. The amendment is not advisable.

Sd/- P. ...

O.C.

Remembrancer of Legal Affairs.

U.F. to F.D. (Supply) No. /489, dated 15th June 1945.

Mjr/30/8/

4 Cs.

Office of the L.L.A.

Question 1:- All sales of cotton seeds effected after 3-5-1945 except under and in accordance with a permit granted by the District Magistrate, Broach would be invalid.

Question 2:- The District Magistrate cannot indefinitely withhold the issue of permits for removal of cotton seeds. In this connection the attention of the District Magistrate is invited to section 15 of the Defence of India Act.

Question 3:-It is not necessary for the District Magistrate to order that the sales of cotton seeds effected by the owners of forzen stocks either before or after his Order dated 3-5-1945 are invalid. The Order will be enough to determine the invalidity or otherwise of such sales. The second part of the third question is not clear. Particular cases may be given if an answer to this is required. The questions generally are open to the objection that they are hypothetical and there is no statement of the circumstances in which these questions might arise.

Sd/- P.N.M.

21/5/45

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No.4671, dated 21st June 1945

Mjr/30/8/

4 Cs.